

**ANDOVER CONSERVATION COMMISSION MEETING MINUTES
FEBRUARY 5, 2013**

Town of Andover
36 Bartlet Street
3rd Floor Conference Room
7:48pm

CONSERVATION COMMISSION MEMBERS IN ATTENDANCE:

Chairman Donald Cooper, Vice Chairman Michael Walsh, Commissioner Commissioner Fink, Commissioner Commissioner Driscoll, Commissioner Jon Honea, Commissioner Commissioner Greenwood and Commissioner Kevin Porter. Staff Members present were Robert Douglas, Director of Conservation and Linda Cleary, Conservation Agent.

SCHEDULED ITEMS:

100-110 Corbett Street

Present in Interest: David Beshara, Daniel Zarzour, Dan Coughlin, Steven Eriksen, Kristen Perreault, Dan Kim, Rick and Joanne McKenney, Russell and Catherine Anderson, Pauline Dubois, Antoni and Yolanda Jurkiewicz and Sherry Tupper

Staff Recommendation: Close Public Hearing and Issue Order of Conditions

Continued Public Hearing on a Notice of Intent filed by Daniel Zarzour (United Lebanese Cemetery), under the Massachusetts Wetland Protection Act and/or the Andover Wetlands Protection By-Law, for the proposed project to extend existing cemetery and provide more plots including wetland crossing, regrading, BVW restoration and building a driveway.

There were two questions from the Commission at the last hearing that were to be addressed, which were the applicability of stormwater standards to the proposed project and the question of a previously existing vernal pool and the impact it would have had on the proposed development on the site. Jeff Bridge provided his report, which the Commission reviewed. According to Natural Heritage & Endangered Species Program, this wetland area has not been identified as a potential vernal pool and as such, is not a vernal pool.

Dan Coughlin addressed the Commission and provided the stormwater calculations. The hydrolic calculations provided did show a 37% decrease of peak runoff flowing from the site to the street. He also ran standard vernal pool calculations per DEP regulations. The elevation of the wetland area is higher than the street.

Chairman Cooper did review the stormwater calculations and he believes they provide the data to show a decrease in runoff and are stamped and approved by Dan Coughlin as a professional.

Commissioner Greenwood inquired as to the interpretation of the vernal pool. Jeff Bridge's report provides there is no evidence of a vernal pool on the property.

Commissioner Fink expressed her concern that the Commission does not know the conditions of the property prior to the logging occurred. The conditions last summer were of highly disturbed soils, which could have drastically changed whatever was occurring prior to logging. Commissioner Fink reviewed the Topography Map provided with Dan Coughlin and discussed any offsite watershed that may run onto the property. Stormwater calculations were also discussed as well as proposed pipe elevation under the roadway. She also expressed her concern that no soils testing were done.

Steve Erickson provided his opinion regarding the condition of the property prior to logging. The topsoil was disturbed, however the bottom layers were not disturbed, and showing there was not a significant change in topography.

Kristen Perrault, an abutter, inquired as to when construction and restoration will begin. Phase I will begin ASAP with the restoration and access roadway being done by June or July 2013.

Commissioner Fink requested a peer review be done. Chairman Cooper stated that the Commission will not require a peer review as the stormwater calculations provided show a decrease in runoff. Vice Chairman Walsh agreed.

It was requested that the inlet and outlet mirror the existing conditions and staff to review prior to construction.

Chairman Cooper asked for a Motion. Vice Chairman Walsh made a Motion to close the public hearing and issue the Order of Conditions at the next hearing; it was seconded by Commissioner Greenwood and unanimously approved.

221 Highland Road

Present in Interest: Robert Murphy, Andrew Benson, Sherry Tupper, Bill Walsh, Stuart Melnitsky, Christine Photis

Staff Recommendation: Close Public Hearing and Issue Draft Order of Conditions.

Continued Public Hearing on a Notice of Intent filed by Robert Murphy under the Massachusetts Wetlands Protection Act and/or the Andover Wetlands Protection By-Law, for the proposed removal of invasive plant species, tree stumps and machine parts, including restoring jurisdictional filled area, placement of wooden sheds and fencing.

Agent Cleary presented this to the Commission. This was continued from August 12, 2012 for purposes of a site visit on September 8, 2012 and submittal and plan requirements to be met by Applicant.

Continued from December 13, 2012 for purposes of submitting a revised plan depicting items previously requested by the Commission and payment of fees due under the local By-Law.

All requested information and fees have been received with a sufficient increase in plantings. The revised plan depicts more 25 foot bounds at the request of staff. There are no DEP comments. Site monitor will be Markus Pinney.

Commissioner Fink noted on the revised plan the word "grass" was noted in various places, including in the tree line and near the paddock in a wooded area. Trees had been cut in this area, but it was

understood that grass was not be expanded into this area. This was addressed in the 2nd Enforcement Order and Applicant filed the Notice of Intent to determine 25 foot non-disturb and 50 foot no-build under the by-law and replanting some of the trees.

Bob Murphy clarified the revised plan by explaining that these were to be “native grasses” and not meant to be lawn. The plan does not designate the area to be mowed or maintained as a lawn. This should be made clear on the plan.

Commissioner Fink questioned if the Applicant was being allowed to cut all the trees up to the 25 foot non-disturb. The Commission can only enforce the 25 foot non-disturb and must allow the homeowner to have the right and use of their property.

Chairman Cooper asked for clarification of the grassed areas noted on the plan. Mr. Murphy replied that the grasses were planted as erosion control and not to be mowed. The Commission would like those “grassed areas” on the plan to be labeled “not to be mowed”. The intent is not to have a lawn by the tree line, it is to remain native. It was agreed that the “grassed areas” were to be labeled as “grassed areas not to be maintained as lawn”. Mr. Murphy then suggested the Applicant would want to mow the grassed areas outside the 50 foot no-build area, but the intent he had was to show the “grass areas” as stabilized for erosion control. There is not be no mowing or disturbing of vegetation with the 25 foot non-disturb area. The Commission needs clarification on this point.

Commissioner Greenwood asked if the intent of the grassed area was to use for animal grazing. Only the grassed area within the paddock is to be used for grazing. The ground vegetation is native grass according to Mr. Murphy. The intent is to leave the back area native per Mr. Murphy.

Chairman Cooper was satisfied if the area is not to be maintained as a lawn, but allowed to remain natural.

Agent Cleary understood that the Applicant wanted to have full range to use her property as she sees fit outside the 25 foot non-disturb zone. She asked Mr. Murphy to confirm the Applicant comprehends that the Commission understands the area will be left to naturalized grass.

Mr. Murphy stated the intention is to let the vegetation within the 50 foot no-build area grow naturally. The Commission agreed with this condition in perpetuity. Mr. Murphy then stated the he did not wish to deny the Applicant their rights under the act by extending the vegetation to the 50 foot no-build. It is the Applicant’s intent to follow the law. Mr. Murphy did not wish to set the precedent in the Town that homeowners could not mow their lawn within the 50 foot no-build.

Commissioner Fink noted the plan provided that Oriental Bittersweet to be removed, not saplings. The tree line on the plan extends closer to the 50 foot no-build area which leads the Commission to believe that the trees and any saplings within this area are to remain in place. The by-law states the closest you can clear is within 25 feet of a wetland, not that the homeowner MUST clear to 25 feet of a wetland.

Anthony Jurkiewicz, an abutter, addressed the Commission confirming that the Applicant has cut trees within the wetland using chainsaws to make room for the paddock for the animals. All work done by the Applicant has gone beyond what is allowed. He is also concerned about placement of the animal feces on the property. He feels nothing will be done in good faith by the Applicant.

Bill Walsh, an abutter, asked if a paddock fence within the 50 foot no-build zone could be erected. A fence can be put in that area, but not a shed or barn.

Laurie Bresnan, an abutter, asked what kind of grass will be planted? Natural grass or grass for animals to graze upon? The Commission cannot regulate what kind of grass is to be planted.

Agent Cleary asked for a plan that specifically states where the tree lines are, where the naturalized areas are and where the grass and lawn area will be in perpetuity and the Commission agreed. Chairman Cooper reiterated that the area up to the 50 foot no-build to allow to naturalize, which is more than the letter of law would require. Commissioner Greenwood suggested Mr. Murphy bring this back to his client and get approval. Mr. Murphy stated his submitted plan has more than enough information to close the hearing. Mr. Murphy then stated he would like the opportunity to meet with his client to discuss the questions of the Commission regarding the distinction between lawn and naturalized area. Andrew Berman, an abutter, stated that significant trees were cut and he understood that the trees would need to be replanted. He would like to review that information or replanting plan. He was informed the plan is available at the Conservation Department.

Chairman Cooper asked for a Motion. Commissioner Porter made a Motion to continue to February 19, 2013 at 8:15pm, it was seconded by Commissioner Driscoll and unanimously approved.

Commissioner Driscoll inquired as to the status of the law suit brought by the Applicant. Carol McGravey agreed to advise staff.

90 Beacon Street, Andover Country Club

Fairway #3 and #4

Present in Interest: Steve Erickson

Staff Recommendation: Continue.

Public Hearing on an Abbreviated Notice of Resource Area Delineation filed by C.A. Investment Trust under the Massachusetts Wetlands Protection Act to confirm the boundary of bordering vegetated wetland and riverfront area.

Mr. Douglas presented this to the Commission. The filing is under the WPA only, not the By-Law. He has visited the site twice and has requested the following changes:

Show culvert on cart path near WF 45C end; reassess hydric area near downed tree and WF 11C (ground frozen); show and size 2 culverts near WF 20C; re-establish flags 26 and 27 which are missing; move wetland flag up 15 feet at flag WF 35C; move up 18A and 17A 5 feet; Move 14A up 10 feet; move 33E 25 feet (root rot, high bush blueberry and fern); move 34E 25 feet; and move WF 10E 12 feet.

Mr. Erickson agreed to all the requested changes and will provide a revised plan to Staff. Mr. Douglas will revisit the site.

Mr. Douglas inquired as to why this filing was filed under the WPA only? Mr. Erickson stated that the local by-law states the filing of the ANRAD is optional and the filing fees would be much higher. Staff stated there are findings under the by-law that are used to distinguish a wetland. This will likely come up in future hearings on this project. It should be noted that the finding is not under our by-law and may need to be assessed at the time of the Application.

Commissioner Fink would like a site visit coordinated with staff and Steve Erikson. Staff agreed to coordinate.

Chairman Cooper asked for a Motion. Commissioner Greenwood made a Motion to continue to February 19, 2013 at 8:15pm, it was seconded by Commissioner Honea and unanimously approved.

CONSENT AGENDA:

Minutes

Approval of minutes for meetings of January 5, 2013 and January 24, 2013.

Vice Chairman Walsh made a Motion to approve; it was seconded by Commissioner Porter and unanimously approved.

DISCUSSION ITEMS THAT MAY REQUIRE A VOTE:

197 Andover Street

Present in Interest: Shane Marrion, Robert Roy and Carol McGravey

Discussion of Conservation Easement for this property. The Commission permitted this project about a year ago and now the Applicant is seeking a Certificate of Compliance as well as restrictions on the easement on the site. A condition in the Order of Conditions was to convey Parcel A, as shown on a plan prepared by Bill McLeod, to the Town.

Carol McGravey detailed the steps necessary to accomplish the conveyance of this Parcel A. The Deed must be accepted by the Selectmen and Conservation Commission and must reference the easement. A title search must be completed by Town Counsel and draft documents need to be reviewed.

Bob presented the recorded plan prepared by Bill McLeod which showed the Access Easement and was presented to the Commission at the time the project was approved. This approval was based on the property being a commercial building, however the parking is not conducive to a commercial building.

Mr. Marrion is now marketing the property as a residential property.

Shane Marrion was not aware that recording the Deed without Town acceptance was not binding. Mr. Marrion also stated that the Easement is not written in the Order of Conditions, so he did not believe he was obligated to grant it. He currently has a residential buyer in place to purchase the property. He also stated that he believes Mr. McLeod could have negotiated the access easement more fairly.

Vice Chairman Walsh inquired as to what changes to the easement are being requested. Mr. Marrion would prefer to not convey an easement at all since all water rights/frontage are being conveyed to the Town. Conveying this easement creates an issue with selling the property as a residential property.

Vice Chairman Walsh recalled visiting the property and making several provisions for the parking area, which was the key to the project moving forward. This was the closest expansion of parking along the Shawsheen the Commission has approved.

Chairman Cooper stated the Certificate of Compliance cannot be issued due to procedural issues missing. The Applicant can request to continue the request for the Certificate of Compliance. There will need to be further discussion regarding the granting of the easement between the Applicant's legal counsel and our Town Counsel. The easement was specifically discussed as mitigation during the approval process.

Commissioner Fink stated she supported the project based on it being a commercial property. If the property will be used as a residential property, there is too much pavement and parking. Should we ask the pavement be removed?

Commissioner Greenwood remembered the easement being a major factor in allowing the extra parking on this property. There are other lots which set precedence in Town for easements close to a residential home.

Commissioner Driscoll reminded the Commission that the plan approved contained the Access Easement. She was opposed to the project, but because Mr. Marrion presented to the Commission that this was to be a commercial building, she agreed to approve the project with the extra parking. Parcel A is not land locked because the plan approved and recorded reflects the agreed upon Access Easement. Bob Roy, the prospective buyer, addressed the Commission. The property has been mixed used residential in the past, but has been vacant since 2004. 30% of the property has been donated for riverfront access. The walking easement will interfere with residential use as access for the easement will be over the driveway.

Chairman Cooper asked Mr. Marrion's Attorney to contact Carol McGravey regarding the easement and conveyance of Parcel A. The Commission feels they are entitled to both Parcel A and the Access Easement.

The Commission did not take action on the Certificate of Compliance per Applicant's request.

278R High Plain Road

Update on Land Swap Proposal. The Appraisal has not been received and we are asked to table until February 19, 2013 meeting.

SunGen Solar Project

Present in Interest: Mark Johnson, Kathryn Morin, Dan Holt and Carol McGravey

Update and discussion regarding conveyance of Lot B South Street. The Commission reviewed the report from our independent LSP. The recommendation is based on two primary findings which include documented illegal disposal of 6 55-gallon drums; presence of debris on the property such as 5-gallon oil buckets and machine/auto parts. The recommendations are the installation of a minimum of 3 up gradient and 2 down gradient groundwater monitoring wells, either permanent or temporary wells and sample groundwater from the wells and submit the samples to a Massachusetts DEP certified analytical testing laboratory. The samples should be tested for Volatile Organic Compounds, Semi-volatile Organic

Compounds and Priority Pollutant Metals. The testing would be done in the span of one day and then sent off for analysis.

Commissioner Greenwood inquired as to the cost of the testing. It will be in the \$10,000 range.

Vice Chairman Walsh inquired as to how quickly the testing could be done. Again, it can be done quickly once we have a proposal and the funds to pay for it.

Mark Johnson addressed the Commission. His client disagrees with what needs to be done with respect to further testing. If the Town wants to undertake further testing, it needs to be completed within 60 days in order to move forward. An option would be to continue with the Town conducting the testing, but have a Conservation Restriction in place in case the conveyance does not take place. This would satisfy Natural Heritage and allow SunGen to move forward with their project.

Chairman Cooper believes the testing can be completed within a month's time.

Mark Johnson reiterated that he be allowed to move forward with a Conservation Restriction while the testing is being done. He asked the Commission to provide a letter to Natural Heritage stating the after its due diligence, the Town will either take possession of the property or hold the Conservation Restriction.

Chairman Cooper stated that the Town will have to make a decision to fund testing on someone else's property. Attorney Johnson informed the Commission that SunGen will NOT contribute for testing. He would like to present the Conservation Restriction at the next Conservation Meeting.

Carol McGravey will review the Conservation Restriction option and will speak with the LSP regarding his report and recommendations. The LSP should provide the Commission with a scope of work to be performed. Town Counsel is also reviewing the maintenance work which is required over the years. If the Town owns the property, they will be responsible to Natural Heritage for this maintenance, but with the solar array there is no access until sometime in the future. SunGen is proposing to do the maintenance work during that period. There are issues of easements, access, etc., that need to be worked out. This is not as simple as a Deed transfer of the property.

Commissioner Fink requested the copies of the most current draft documents being reviewed by Town Counsel. She also questioned if the Conservation Commission holds the Conservation Restriction, how can we be both the Grantee and Grantor if we decide to accept the Deed to the property? This would have to be worked out with Natural Heritage.

Attorney Johnson provided the Commission with a plan indicating the lot lines and proposed future vehicular and pedestrian access which was reviewed and discussed.

Commissioner Driscoll inquired if the Conservation took the land in fee, we would like to access the property at different times to check on the land. How could that occur with no pedestrian access? The rights to access the property are severely limited.

Commissioner Greenwood stated that the access is now clearly stated on the plan and we can always request access via National Grid easement or via the Shawsheen River.

Staff will discuss with Town Manager the best way to procure payment of the recommended testing.

Chairman Cooper stated that during other dealings with Natural Heritage, they always require the Grantee to have access to the property.

Attorney Johnson again requested the Commission act as Grantee for the Conservation Restriction and accepts it at the next meeting. Chairman Cooper stated that the Conservation Restriction without access is troublesome and he is not sure Natural Heritage will agree to this. Chairman Cooper would not

ask the Commission for a straw poll regarding the Conservation Restriction, he asked each Commissioner to review and forward any questions to staff or Town Counsel. Chairman Cooper asked if Sanborn Head to contact a few of their LSP contacts for a proposal based on the scope in the report.

This discussion is continued to February 19, 2013 at 7:45pm.

Newport Circle Subdivision

Joint Stipulation of Dismissal has been filed regarding the Enforcement Order and Amended Order of Conditions for Newport Circle Subdivision. Town Counsel is waiting for a response on dismissing the Appeal for an Adjudicatory Hearing at DEP.

The next meeting will be held at 7:45pm on February 19, 2013.

The meeting was adjourned at 10:08pm by Motion of Vice Chairman Walsh, seconded by Commissioner Driscoll and unanimously approved.

Respectfully submitted by,

Lynn Viselli,
Recording Secretary